

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

FILED

MAR 30 2010


CLERK

MICHAEL TWO ELK,)	CIV. 09-5090-RHB
)	
Petitioner,)	
)	ORDER DENYING
vs.)	CERTIFICATE
)	OF APPEALABILITY
UNITED STATES OF AMERICA,)	
)	
Respondent.)	

Petitioner filed an application for writ of habeas corpus pursuant to 28 U.S.C. § 2255. This petition was denied. Subsequently, petitioner has filed a notice of appeal. The matter has been remanded to the Court for the limited purpose of determining whether a certificate of appealability should issue. See Tiedemen v. Benson, 122 F.3d 518 (8th Cir. 1997).

Based upon the reasons set forth in the Order dated February 12, 2010, and pursuant to Fed. R. App. P. 22(b), the Court finds that petitioner has not made a substantial showing of the denial of a constitutional right. See 28 U.S.C. § 2253(c)(2). As a result, the certificate of appealability will be denied. Accordingly, it is hereby

ORDERED that a certificate of appealability shall not issue.

Dated this 29th day of March, 2010.

BY THE COURT:


RICHARD H. BATTEY
UNITED STATES DISTRICT JUDGE